

**TESTIMONY OF REPRESENTATIVE SHARON TREAT**  
**CO-SPONSOR, LD 1183,**  
**"AN ACT TO PREVENT PREDATORY MARKETING PRACTICES AGAINST MINORS**  
**REGARDING DATA CONCERNING HEALTH CARE ISSUES"**

**April 9, 2009**

**Before the Joint Standing Committee on Business, Research & Economic Development**

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Senator Schneider, Representative Smith and members of the Standing Committee on Business, Research & Economic Development. I am Sharon Treat, State Representative for District 79, and I live in Hallowell. I am here today to urge your support of this important legislation, of which I am proud to be a cosponsor.

- ***Marketing pharmaceuticals is big business, and kids are the next frontier.***

According to a 2006 article in the Journal of Health Economics, drug companies spend 20-30% of their total budgets on marketing, often double what they spend on research and development. Since 1997, when the federal Food and Drug Administration relaxed its restrictions of direct-to-consumer (DTC) advertising, DTC has skyrocketed. In 1996, DTC advertising was a \$220 million market. By 2000, DTC ads had shot up to an astounding \$1.8 billion. Currently, the estimated annual cost of pharmaceutical ads, just on television and in popular media, is \$2.5 billion, a figure that does not include internet ads, social networking or text messaging.

**Should drug companies directly market their wares to minors? I think not.**

Drugs have serious side effects. Accutane, a commonly prescribed but powerful acne drug, has side effects including depression and birth defects, and has been linked to youth suicides (Attachment #1). The company marketing Accutane has been the subject of FDA warning letters for misleading advertising that minimized side effects. Marketing to kids exacerbates the problem that already exists with deceptive advertising that fails to accurately report on risks as well as benefits, by targeting vulnerable children who have even less capacity to seek out or evaluate such

information. Further, it raises serious questions of privacy as information is collected from children and used to target marketing campaigns.

- ***Marketing aimed at teens can be devastatingly effective.***

Children are vulnerable to marketing that targets their feelings about body image and social position. The latest trends in marketing drugs – and not just to teens – are ads and affinity groups on social networking sites like Facebook and My Space, text messaging and mobile communications.

This trend is especially likely to be effective with teens. A recent study found that 1 in 3 teens is browsing the web on their phone, and ads are now appearing on mobile phones. Teens are a prime market; this same study trumpets: “Great news for mobile advertising – 6 in 10 teens willing to provide personal information.” (Attachment #2, “A generation unplugged,” September 12, 2008, Harris Interactive).

Great! Just what we need – minors sending their personal information to drug companies so that those companies can better target their solicitations. Such solicitations can be extremely innovative and effective. According to the Los Angeles Times, Nintendo has a marketing campaign involving the mobile-phone marketing firm Hyperfactory which published a brain teaser relating to it in game magazines. Users sent a text message to get the answer, and they received a message back with a link to sign up for alerts about the game and download free wallpaper and mobile games. When Kiwibox.com, an online teen magazine, launches a service to send teens text messages with horoscopes and celebrity alerts this year, they'll include a short advertisement at the end sponsored by different brands such as Sparq Inc., a company that designs workout training programs for aspiring athletes, and Paramount Pictures.<sup>1</sup>

The use of this media for marketing drugs to children is not speculation. Drug companies are actively courting minors through a variety of advertising media. Here's what a recent article in the Washington Post reported:<sup>2</sup>

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<sup>1</sup> “Advertisers in touch with teens' cellphones,” By Alana Semuels, LA Times, May 23, 2008

<sup>2</sup> Washington Post, “What teens are Hearing about Drugs,” By Francesca Lunzer Kritz, 9/8/08

Tazorac, an acne drug made by Allergan, is the subject of a back-to-school ad campaign featuring situations such as high school graduation and the prom in which teens might feel particularly self-conscious about their acne. Incentives to register on the site and learn more about the drug (teens 13 to 18 need a parent's permission) include a \$5 Starbucks card and a chance at winning a Nintendo Wii console, a video camcorder or a laptop computer.

Ads meant to get a teen's attention typically feature cool clothes, hip music and other teen draws. Bayer Healthcare Pharmaceuticals, the maker of Yaz, a birth control pill, hired the Veronicas, a group popular with teen girls, to record a song for one of the drug's commercials. The Web site of Galderma, the maker of Differin, another acne drug, offers teens a quiz called "The Truth About Zits." ...

... "We use a combination of media, trying to reach" teens, says Kathy Magnuson, executive vice president of Brand Pharm, whose clients include Galderma. In June, Galderma launched a Differin ad on ABC Family and MTV and has also bought space for the ad at movie theaters and on the Internet.

Drugmaker Sanofi Aventis used a low-tech but novel approach to reach teen girls. The company placed a full-page ad (plus another page of FDA-required consumer information) for acne drug Benzaclin in the fall catalogue of Delia's, a teen-girl clothing chain.

Advertising targeted at teens was first noted in 2000, when the New York Times reported that both Roche Laboratories and Galderma Laboratories were running ad campaigns aimed at teenagers to make them aware of prescription medications that treat that most common but angst-laden adolescent condition: acne. According to the article, the companies were running their campaigns on family and youth-oriented programming on national cable television including spots on the Nickelodeon Channel, spending more than \$8 million on television advertising in just 11 months.<sup>3</sup> As the Times article notes, "(y)oung people are the natural target because 85 percent will get acne."

Since 2000 our love affair with mobile technology has transformed not only our lives but how advertisers try to reach us, with text messaging and social networking

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<sup>3</sup> "Teenagers Now a Target of Prescription Medicine Promotions," New York Times March 16, 2000

joining Internet, TV and magazine advertising aimed at kids. Here's the recent advice offered on a website devoted to marketing tactics: "If you're trying to reach teenagers online, you probably already know that social networks should be a part of your Internet campaign. ... The UC-Berkeley study that finds a completely different "class" of American teenagers on MySpace versus those on Facebook. MySpace users ... tend to be minorities and get jobs straight out of high school, while Facebookers tend to be white, go to college and come from wealthier homes, being part of a more "aspirational class." ... Danah Boyd, PhD student at UC-Berkeley and researcher on the project, commented that "MySpace has most of the kids who are socially ostracised at school because they are geeks, freaks, or queers."<sup>4</sup> (Attachment #4)

According to YPulse, a website claiming to be the go-to source for information about marketing to Generation Y, "teens are spending an average of 11.5 hours per week online, doing everything from instant messaging and visiting social networking sites to shopping and listening to music ... 95% of teens say[ing] they have belonged to a social networking site at some point. The average teen has signed up for over four social networking sites and currently belongs to two. Teens report learning about music, other websites, movies, TV shows, and new trends from social networking sites. Teens are receptive to advertising on these sites, where the majority of teens learn about financial services (63%) movies in theaters (59%), mobile services and accessories (58%), travel (57%) and other websites (53%) from ads on these sites." (Attachment #3)

- ***Such marketing tactics raise serious privacy issues.***

A Business Week opinion piece notes that this intersection of marketers, teens and Facebook raises privacy concerns: "With Facebook's decision to allow advertisers to display ads based on information users post on their profiles, the debate over online privacy has gained new momentum, especially since today's teenagers are living out a big chunk of their lives on social networking sites. Advertisers can now target underage consumers with relative ease, raising obvious ethical questions. But even if there were

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<sup>4</sup> "Marketing to Teens: Social Networking," June 25th, 2007 by Jordan McCollum

no such worries, marketers would need to be aware of pitfalls in trying to reach young consumers online.”<sup>5</sup> (Attachment #5)

- ***Regulation is lacking.***

Direct-to-consumer advertising for prescription drugs has been permitted by the Food and Drug Administration since 1997, and ***there are no specific rules for marketing to kids and teens.***<sup>6</sup> The only law that regulates online marketing to children is COPPA, the Children's Online Privacy Protection Act, which requires parental permission before any commercial entity can collect personal information from a child under 13. But there's no law that governs marketing to older teens.

Maine needs to fill this void, which LD 1183 will do. We have a history of protecting kids from predatory marketing tactics by the alcohol and tobacco industries. The marketing of prescription drugs raises equally serious issues with respect to health and safety threats to minors, and its time to take action by voting LD 1183 “ought to pass.”

THANK YOU.

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<sup>5</sup> BUSINESS WEEK, Viewpoint November 7, 2007, “Marketing to Teens Online,” by Anastasia Goodstein

<sup>6</sup> Robert Temple, director of the Office of Medical Policy at the FDA's Center for Drug Evaluation and Research, quoted in the Washington Post, “What teens are Hearing about Drugs,” By Francesca Lunzer Kritz, 9/8/08

